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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/673,713 | 09/29/2003 | Martin Miller | 455610-2590.3 | 2457 |
| 20999 7590 04/05/2007 FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151 | | | EXAMINER COSIMANO, EDWARD R | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2863 | |

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 04/05/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|--------------------------------|-------------------------------|--|
| Office Action Summary | Application No. 10/673,713 | Applicant(s) MILLER ET AL. | |
| | Examiner Edward R. Cosimano | Art Unit 2863 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/29/2003 & 2/27/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>12/8/04; 8/22/05; 2/28/06</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. The Oath/Declaration filed on 27 February 2004 and the Abstract as originally filed are acceptable to the examiner.
2. Applicant's claim for the benefit of an earlier filing date pursuant to 35 U.S.C. 119(e) is acknowledged.
3. The combined set of drawings containing figures 1, 2, 3 & 6 as presented in the set of drawings filed on 29 September 2003 are acceptable to the examiner.
4. The drawings filed on 29 September 2003 are objected to because:

A) the drawings fail to comply with 37 CFR 1.84(p)(5) because they do not include the following reference legend mentioned in the description, note reference legend 510 which has been mentioned in the written description of figures 3 & 5 located in the paragraphs:

(1) between page 10, line 18, and page 11, line 6, "At step 340, an ... shown in figure 5 at 510. The ... the sliced-eye-diagram."; and

(2) at page 12, lines 1-3, "Figure 5 is ... eye diagram 510 ... and method of the invention.";

and see also in regard to the corresponding objection to the disclosure.

B) the drawings fail to comply with 37 CFR 1.84(p)(5) because they include the following reference legend not mentioned in the description, note reference legend 430 which has not been mentioned in the written description of figure 4 located in paragraphs between page 12, line 10, and page 13, line 31, "As shown in Figure 4, a ... by the compare mask unit 350.", and see also in regard to the corresponding objection to the disclosure.

- 4.1 Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the

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renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The disclosure is objected to because of the following informalities:

A) applicant must update the application data with the current status of each reference application in paragraph number at page 1, lines 3-5. Note the suggested change to this paragraph below.

B) errors and/or inconsistencies between the drawings filed on 29 September 2003 and the written description have been noted:

(1) if applicant chooses not to add reference legend 510 to figure 5, note above, then the specification fails to comply with 37 CFR 1.84(p)(5) because the specification includes an explicit reference to this reference legend in the description of figures 3 & 5 located in the paragraphs:

(a) between page 10, line 18, and page 11, line 6, "At step 340, an ... shown in figure 5 at 510. The ... the sliced-eye-diagram."; and

(b) at page 12, lines 1-3, "Figure 5 is ... eye diagram 510 ... and method of the invention.";

and applicant should note the above proposed amendment below.

(2) if applicant chooses not to delete reference legend 430 from figure 4, note above, then the specification fails to comply with 37 CFR 1.84(p)(5) because the specification does not include an explicit reference to this reference legend in the description of figure 4 located in paragraphs between page 12, line 10, and page 13, line 31, "As shown in Figure 4, a ... by the compare mask unit 350."

C) in view of the above objections it is suggested that the following paragraphs be amended as indicated:

(1) at page 1, lines 3-5:

This application claims the benefit of non expired U.S. Provisional Patent Application Serial No. 60/415,236, filed September 30, 2002, the entire contents of which is incorporated herein by reference.

(2) between page 10, line 18, and page 11, line 6:

At step 340, an eye diagram is generated by overlaying each sliced segment of the original data signal and accumulated with all of the others segments in an x,y,z display where the x and y values represent a time of acquisition and corresponding voltage level and the z axis accumulates the frequency of occurrence of each x,y value, as is shown in figure 5 at ~~510~~. The present invention generates a so called "sliced-eye-diagram", because it consists of a method and procedure according to the invention to assimilate one large record of a data or communication channel into an eye-diagram with relatively perfect timing relation to the extracted system clock, thus reducing jitter that is typically generated in accordance with various physical clock mechanisms and triggers. This method may also be used with a supplied system clock, although it is not required. This method allows for a very repeatable and very rapid evaluation of the nature of the "eye" of a communications or other data signal. While employing the theory of a hardware phase-locked-loop, as described above, this method does not require such a circuit for performing the overall measurement. Thus, the method leverages the information contained in a digitally recorded signal of long duration. First a signal is captured which contains many "symbols" or many "bit-intervals" of a serial data communication channel. The quality of the recording should be as precise as, or more precise than, the phenomena to be observed. In this case the vertical noise and time-base "jitter" must be considered, since they will contribute directly to the information manifested by the sliced-eye-diagram.

(3) at page 12, lines 1-3:

Figure 5 is an example of an eye diagram ~~510~~ produced from a single recorded signal XAUI 3.125 Gigabits/second recorded with a WM 8500 at 20 GS/s, and processed in accordance with the apparatus and method of the invention

5.1 Appropriate correction is required.

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6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

6.1 A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

6.1.1 Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6.2 Claim 9 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 & 17 of copending Application No. 10/673,735 and claims 1 & 17 of copending Application No. 10/673,736. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

A) when claim 9 of the instant applications is considered in regard to claim 1 of either copending Application No. 10/673,735 or copending Application No. 10/673,736, it is noted that claim 9 includes the additional action of “displaying at least one of an eye diagram and mask diagram in accordance with said plurality of data segments”, however since one of ordinary skill at the time the invention was made would recognize, that unless the sliced data/information segments of claim 1 of either copending Application No. 10/673,735 or copending Application No. 10/673,736 are in fact displayed to the

user/operator the results data/information that is generated/produced by the invention of claim 1 of either copending Application No. 10/673,735 or copending Application No. 10/673,736 would have not have a substantial practical useful and beneficial application. Hence, because one of ordinary skill at the time the invention was made would recognize that the resultant sliced data/information segments of claim 1 of either copending Application No. 10/673,735 or copending Application No. 10/673,736 would obviously need to be displayed, then one of ordinary skill at the time the invention was made would recognize that claim 9 of the instant application is functionally equivalent and with in the scope of claim 1 of either copending Application No. 10/673,735 or copending Application No. 10/673,736.

B) when claim 9 of the instant applications is considered in regard to claim 17 of either copending Application No. 10/673,735 or copending Application No. 10/673,736, it is noted that claim 9 includes the additional action of “displaying at least one of an eye diagram and mask diagram in accordance with said plurality of data segments”, however since one of ordinary skill at the time the invention was made would recognize, that the overlaying of the sliced data/information segments as recited in claim 17 of either copending Application No. 10/673,735 or copending Application No. 10/673,736 is part of the data/information processing that is required in order to generate/produce an “eye diagram”. Hence, because one of ordinary skill at the time the invention was made would recognize that the display of overlaid sliced data/information segments of claim 17 of either copending Application No. 10/673,735 or copending Application No. 10/673,736 is required in order to generate/produce the “eye diagram” that is displayed in claim 9 of the instant application, then one of ordinary skill at the time the invention was made would recognize that claim 9 of the instant application is functionally equivalent and with in the scope of claim 17 of either copending Application No. 10/673,735 or copending Application No. 10/673,736.

6.2.1 This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7.1 Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7.2 Since one of ordinary skill at the time the invention was made would recognize that claims 1 & 7 fail to positively recite that the "phase locked loop" is adjusted based on the data/information in the "stored data signal", then one of ordinary skill at the time the invention was made would be confused as to how the recited invention would provide the useful and beneficial function of recovering a meaningful clock signal from the "stored data signal" using the "phase locked loop".

7.2.1 Further in this regard, one of ordinary skill at the time the invention was made would be confused as to how the function of displaying the stored data signal that are positively recited in claims 2, 3, 4, 6 & 7 could be performed in a useful and beneficial manner when a useful and meaningful clock signal, that is related to the stored data signal, has not been recovered from the stored data signal.

7.3 Since claim 8 cannot depend from itself, one of ordinary skill at the time the invention was made cannot determine the scope of the recited invention.

7.4 Claims not explicitly mentioned above include the above noted defect(s) because the unmentioned claims are dependent either directly or indirectly from one or more of the above noted claim(s).

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8.1 - Claim 9 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

8.1.1 It is noted that the disclosure presents a disclosed utility for the invention of:

A) process/method claim 9 as a process/method comprising a sequence of steps/functions/actions that when taken as a whole provide the useful and beneficial

function of “recovering an unknown clock signal from a series of stored test data/information representing a data signal in order to display data/information about the data signal”.

8.1.2 It is further noted that as recited:

A) claim 9 when taken as a whole is directed to a process/method that is intended to achieve the claimed utility of “recovering an unknown clock signal from a series of stored test data/information representing a data signal in order to display data/information about the data signal”.

8.1.3 In regard to each of the pending claims while taking each claim as a whole and interpreting the claims as the claims could reasonably be interpreted by one of ordinary skill at the time the invention was made as guided by the written description, it is noted that one of ordinary skill at the time of the invention could reasonably make the following observations in regard to the interpretation of each of the pending claims.

8.1.3.1 In regard to the recited utility of independent/base claim 9, it is noted that this claim recites an intended field of utility for the invention recited as a method in claim 9 of “recovering an unknown clock signal from a series of stored test data/information representing a data signal in order to display data/information about the data signal”.

8.1.3.2 In regard to the limitations of independent/base claim 9, it is noted that:

A) the first action performed as recited in process claim 9 is deemed to be directed to nothing more than an act for performing the data/information gathering/processing function of “using an unspecified type of test instrument to acquire unspecified data/information regarding an unspecified type of data signal during a predetermined time interval/period”, since as recited the data/information that is gathered/produced by the performing the recited function is positively recited: (1) as being provided as input for use by latter processing that is positively recited as being performed either internally or externally of the recited invention; and (2) as being processed/gathered by any specific machine or process that would perform any other function beyond the act/function recited as data/information gathering/processing.

B) the second action performed as recited in process claim 9 is deemed to be directed to nothing more than an act for performing the data/information

gathering/processing function of “using an unspecified type of machine/process in the test instrument to store in the memory of the test instrument the data/information regarding the data signal that was acquired by performing the first action”, since as recited the data/information that is gathered/produced by the performing the recited function is positively recited: (1) as being provided as input for use by latter processing that is positively recited as being performed either internally or externally of the recited invention; and (2) as being processed/gathered by any specific machine or process that would perform any other function beyond the act/function recited as data/information gathering/processing.

C) the third action performed as recited in process claim 9 is deemed to be directed to nothing more than an act for performing the data/information gathering/processing function of “using an unspecified type of machine/process to recover a clock signal from the data/information that was stored by performing the second action by adjusting the phase of a “clock signal produced by a phased locked loop” in accordance with the determined error between the data/information stored by performing the second action and the “clock signal produced by a phased locked loop”, since as recited the data/information that is gathered/produced by the performing the recited function is positively recited: (1) as being provided as input for use by latter processing that is positively recited as being performed either internally or externally of the recited invention; and (2) as being processed/gathered by any specific machine or process that would perform any other function beyond the act/function recited as data/information gathering/processing.

D) the fourth action performed as recited in process claim 9 is deemed to be directed to nothing more than an act for performing the data/information gathering/processing function of “using an unspecified type of machine/process to slice/decimate/segment the data/information stored by performing the second action into one or more segments with a predetermined length in accordance with the clock signal that was recovered by performing the third action”, since as recited the data/information that is gathered/produced by the performing the recited function is positively recited: (1) as being provided as input for use by latter processing that is positively recited as being

performed either internally or externally of the recited invention; and (2) as being processed/gathered by any specific machine or process that would perform any other function beyond the act/function recited as data/information gathering/processing.

E) the fifth action performed as recited in process claim 9 is deemed to be directed to nothing more than an act for performing the data/information gathering/processing function of "using an unspecified type of machine/process to produce and display an eye diagram and/or mask data/information regarding the stored data/information signal that was segmented by performing the fourth action", since as recited the data/information that is gathered/produced by the performing the recited function is not positively recited: (1) as being provided as input for use by latter processing that is positively recited as being performed either internally or externally of the recited invention; and (2) as not being processed/gathered by any specific machine or process that would perform any other function beyond the act/function recited as data/information gathering/processing.

Hence, one of ordinary skill at the time the invention was made could interpret claim 9 when taken as a whole as being directed to nothing more than a process for the abstract manipulation of data/information with out a claimed application of the results of the manipulation or claimed requirement that any of the recited structure or acts/functions are present or performed for any purpose not related to the manipulation of data/information.

8.1.3.3 The invention recited in claim 9 recites an act/function that implies outputting, for example displaying, the results of some of the processing of claims to an operator/user by using the phrase "displaying at least one of an eye diagram and mask diagram in accordance with said plurality of data segments". However, this recitation is deemed to be an insignificant concrete and tangible practical application of the result of the processing recited in these claims. As set forth above one of ordinary skill at the time the invention was made could interpret claim 9 as being directed to nothing more than a process/machine that is directed to a process comprising nothing more than acts and structures that function to provide:

A) insignificant data/information gathering since the acts/functions as recited in the claim do nothing more than gather data/information for use in the processing that is latter recited in the claim, see In re RICHMAN, 195 USPQ 340 at 344 (CCPA 1977);

B) data/information processing that; (1) includes the use of the collected/gathered data/information, and (2) that lacks a positively recited concrete and tangible application of the results of the processing, see In re WARMERDAM, 31 USPQ2d 1745 at 1758-1759 (CAFC, 1994), and STATE STREET BANK AND TRUST CO. v SIGNATURE FINANCIAL GROUP INC., 38 USPQ2d 1596 at 1602 (CAFC 1998); and

C) the presentation of the results of the recited processing a data/information without a positively recited requirement that the results of the processing be used by anyone or anything.

In view of the above fact situation, the when considering the same fact situation the Court has determined that a claim that is directed to nothing more than the abstract idea of collecting data/information, processing data/information and displaying/presenting the results of the processing as data/information to an user/operator is non-statutory, see (A) claim 5 of In re ABELE and MARSHALL, 214 USPQ 682 at 688 (CCPA 1982), which recited data/information processing and then displaying/presenting of the results of the data/information processing to an user and which the Court held was to be directed to non statutory subject matter; and (B) whereas a claim that collected, processed, and then used the results of the processing to perform another task outside of the processing by applying the results of the recited processing to perform another function in DIAMOND v. DIEHR AND LUTTON, 209 USPQ 1 at 11 (US SupCT, 1981), was held by the Court to be directed to statutory subject matter. Hence, the displaying of the results of processing as recited in the pending claims is deemed to not provide a concrete and tangible result for the results of the processing that is recited in the claims.

8.1.4 In view of the above characterization of claim 9 it can clearly be seen that, as this claim would be reasonably interpreted by one of ordinary skill at the time the invention was made, as merely conveying to one of ordinary skill at the time the invention was made a description of an invention that does not go beyond the gathering and manipulation of data/information and therefor merely sets forth the abstract ideas of receiving and transforming data by processing/manipulating the data/information into other data/information, for example transforming numbers to numbers without:

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A) requiring by explicitly reciting and achieving a claimed requirement that the results of the claimed invention be tangibly used in anyway by anyone or anything in order to achieve either:

(1) a concrete and tangible useful result; or

(2) a concrete and tangible useful practical application of either:

(1) the recited mathematical processing; or

(2) the resultant numbers/data produced by the claimed invention;

or

B) reciting and achieving a physical transformation of one thing into something else.

Such a claimed invention consisting solely of data collection and processing or manipulating data/information, whether it is drafted as a machine or process or manufacture no matter how useful the claimed invention may appear, is deemed to be directed to an attempt by applicant to patent an abstract idea of processing/manipulating data/information which would preempt all uses of the processing recited as the claimed invention and therefore as set forth by the Court the claimed invention is deemed to be directed to non-statutory subject matter, see either (A) DIAMOND v. DIEHR AND LUTTON, 209 USPQ 1 at 8 (US SupCT, 1981), citing GOTTSCALK v BENSON ET AL, 175 USPQ 673 (US SupCT, 1972), and PARKER v FLOOK, 198 USPQ 193 (US SupCT, 1978), at pages 7-8; or (B) In re WARMERDAM, 31 USPQ2d 1745 at 1758-1759 (CAFC, 1994); or (C) STATE STREET BANK AND TRUST CO. v SIGNATURE FINANCIAL GROUP INC., 38 USPQ2d 1596 at 1602 (CAFC 1998); or (D) In re RICHMAN, 195 USPQ 340 at 344 (CCPA 1977); or (E) In re MAUCORPS, 203 USPQ 812 @ 815-816 (CCPA 1979), citing both In re JOHNSON, 589 F.2d 1070, 1077, 200 USPQ 199, 206 (CCPA 1978), and In re FREEMAN, 573 F.2d at 1247, 197 USPQ at 472. Note also “Thus, a process consisting solely of mathematical operations, i.e., converting one set of numbers into another set of numbers, does not manipulate appropriate subject matter and thus cannot constitute a statutory process. In practical terms, claims define nonstatutory processes if they: – consist solely of mathematical operations without some claimed practical application (i.e., executing a “mathematical algorithm”); or – simply manipulate abstract ideas, e.g., a bid (Schrader, 22 F.3d at 293-94, 30 USPQ2d at 1458-59) or a bubble hierarchy (Warmerdam, 33

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F.3d at 1360, 31 USPQ2d at 1759), without some claimed practical application.” MPEP 2106, 2106.01 & 2106.02.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

9.1 Claims 1-9, where claim 8 is considered to be dependent from claim 7, are rejected under 35 U.S.C. 102(e) as being anticipated by Tan et al (6,812,688).

9.1.1 In regard to claims 1-9, Tan et al ('688) discloses a computer implemented machine/process that under the control of an appropriate operating program stored in the memory of the machine/process provides the useful and beneficial function of recovering a clock signal from a data/information signal by synchronizing a clock signal that has been produced by a phase locked loop to the clock signal of the data/information signal. To this end Tan et al ('688) discloses an acquisition machine/process, for example a digital oscilloscope, that acquires, stores and processed a data/information signal. While processing the data/information signal, Tan et al ('688) adjusts the phase and frequency of a clock signal that has been produced by a phase locked loop machine/process within the machine/process of Tan et al ('688) to be synchronized to the clock signal of the data/information signal. And when the clock signal of the phased locked loop has been synchronizing to the clock signal of the data/information signal, then the clock signal of phase locked loop machine/process is the recovered clock signal of data/information signal. Further based on the recovered clock signal the machine/process of Tan et al ('688) processes the data/information signal to produce eye diagrams and mask diagrams.

10. The examiner has cited prior art of interest, for example:

A) Long (3,449,671) discloses a machine/process in which the acquired data/information that represents an input waveform is adjusted in order to facilitate the comparison of the waveform represented by the displayed data/information.

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B) either David et al (3,778,550) or Scholilmeier (DT 2462046 A1) or Kuhn (4,375,694) or Shier (4,964,117) or Warwar et al (6,738,922) disclose a machine/process in which a internally generated clock is synchronized to a data/information signal be adjusting the phase and/or frequency of the internal clock to match the data/information clock signal.

C) either Miller et al (WO 2004/032049 A2 or 2004/0123208 or 2004/0153883) disclose machines/process for the analysis of a serial streams of data/information representing data/information signals.

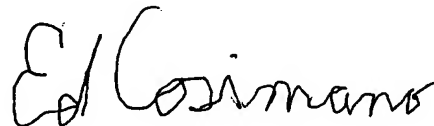
10.1 It is noted that reference BC (entitled "Communications waveform measurements") as listed on the PTO-1449 filed on 08 December 2004 has not been considered by the examiner because a copy of this document can not be located in the instant application file.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward R. Cosimano whose telephone number is 571-272-0571. The examiner can normally be reached on 571-272-0571 from 7:30am to 4:00pm (Eastern time).

11.1 If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow, can be reached on 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11.2 Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ERC
03/29/2007



Edward Cosimano
Primary Examiner